

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

TUESDAY, THE 2ND DAY OF AUGUST 2022 / 11TH SRAVANA, 1944

WP(C) NO. 5187 OF 2020

PETITIONERS:

- 1 RUBBER WOOD INDIA PVT.LTD.,
REGIONAL OFFICE, INDIAWOOD FACTORY, RUBBER BOARD,
RRDTC COMPLEX, MANGAANAM.P.O,
KOTTAYAM-686108.
REPRESENTED BY ITS MANAGING DIRECTOR, SRI.SHAJI ABRAHAM.
- 2 SHAJI ABRAHAM,
MANAGING DIRECTOR, RUBBER WOOD INDIA PVT.LTD,
REGIONAL OFFICE, INDIAWOOD FACTORY, RUBBER BOARD,
RRDTC COMPLEX, MANGAANAM.P.O,
KOTTAYAM-686018.

BY ADVS.
MATHEWS K.UTHUPPACHAN
SRI.TERRY V.JAMES
SRI.SHARAN SHAHIER

RESPONDENTS:

- 1 MANOJKUMAR P.S.,
PANNUSSERIL HOUSE, PUNNATHARA EAST.P.O, KOTTAYAM-686583.
- 2 ANISH.K,
ELLUKALAYIL HOUSE, PUTHUPPALLY.P.O,
KOTTAYAM-686011.
- 3 JOSE K.JOSEPH,
THANATH HOUSE, MANNANAM.P.O,
KOTTAYAM-686018.
- 4 SURESH.K.P,
PARACKAL HOUSE, VELLOOR.P.O,
KOTTAYAM-686501.
- 5 KORULA THOMAS.T,
THAREPARAMBIL HOUSE, PUTHUPPALLY.P.O,
KOTTAYAM-686011.

- 6 RAVEENDRAN.P.C,
PALPPARAMBIL HOUSE, THOTTAKKADU.P.O,
KOTTAYAM-686539.
- 7 SURESH.D,
VALIYAVEETILKAROTTU HOUSE,
KUZHIMATTOM.P.O, KOTTAYAM-686535.
- 8 CHERY C.JACOB,
CHEMBAKAMATTATHIL HOUSE,
PADINJATTINKARA.P.O, KOTTAYAM-686571.
- 9 RAJU.A.M,
ALACKALPARAMBIL HOUSE, MEENADOM.P.O,
KOTTAYAM-686633.
- 10 VINODKUMAR.K,
PLAMKUTTATHIL HOUSE, EATTMANOOR.P.O,
KOTTAYAM-686631.
- 11 THE EXECUTIVE DIRECTOR,
RUBBER BOARD, HEAD OFFICE,
KOTTAYAM-686009.
- 12 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF LABOUR, SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI-110001.
- 13 REGIONAL LABOUR COMMISSIONER(CENTRAL),
MINISTRY OF LABOUR AND EMPLOYMENT,
OFFICE OF THE REGIONAL LABOUR
COMMISSIONER(CENTRAL), RAMANILAYAM, T.C.25/3453,
UPALAM ROAD, TRIVANDRUM-695001.
- 14 THE PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-
LABOUR COURT, 38/377, A-2, KARITHALA LANE,
KARSHAKA ROAD, ERNAKULAM-682016.
- *ADDL. MR.RENEHAN VAMAKESAN,
R 15 RESIDING AT VILLA 23,
SKYLINE ROSEMOUNT HOMES, KUNJAN BAVA ROAD,

VYTILLA P.O., KOCHI, KERALA, 682 019
(*ADDITIONAL R15 IS IMPEADED AS PER ORDER
DATED 02.06.2022 IN WP(C)5187/2020.)

BY ADVS.
SRI.A.K.HARIDAS
SRI.V.ABRAHAM MARKOS
Mr.B.PRAMOD, CGC
G.HARIKUMAR (GOPINATHAN NAIR)
SRI.ABRAHAM JOSEPH
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.VIPIN ANTO H.M.
SMT.ZAINAB ZEBAIBRAHIM P.M.
SHRI.SHARAD JOSEPH KODANTHARA
SRI.ISAAC THOMAS
AKHIL SURESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.08.2022, ALONG WITH WP(C).8441/2020, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

TUESDAY, THE 2ND DAY OF AUGUST 2022 / 11TH SRAVANA, 1944

WP(C) NO. 8441 OF 2020

PETITIONER:

THE RUBBER BOARD,
SUB JAIL ROAD, KOTTAYAM - 686002,
REPRESENTED BY ITS EXECUTIVE DIRECTOR,
DR. K.N. RAGHAVAN IRS.

BY ADVS.
ABRAHAM JOSEPH MARKOS
SRI.V.ABRAHAM MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.VIPIN ANTO H.M.
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA
SMT.ZAINAB ZEBAIBRAHIM P.M.

RESPONDENTS:

- 1 MANOJKUMAR P.S.,
PANNUSSERIL HOUSE,
PUNNATHARA EAST P.O., KOTTAYAM- 686583.
- 2 ANISH K.,
ELLUKALAYIL HOUSE,
PUTHUPPALLY P.O., KOTTAYAM-686011.
- 3 JOSE K JOSEPH,
THANATH HOUSE, MANNANAM P.O., KOTTAYAM-686018.
- 4 SURESH K.P.,
PARACKAL HOUSE, VELLOOR P.O., KOTTAYAM-686501
- 5 KORULA THOMAS T.,
THAREPARAMBIL HOUSE,

PUTHPALLY P.O., KOTTAYAM-686011.

- 6 RAVEENDRAN P.C.,
PALPPARAMBIL HOUSE,
THOTTAKKADU P.O.,
KOTTAYAM-686539.
- 7 SURESH D.,
VALIYAVEETIL KOROTTU HOUSE,
KUZHIMATTOM P.O., KOTTAYAM-686535.
- 8 CHERY C. JACOB,
CHEMBAKAMATTATHIL HOUSE,
PADINJATTINKARA P.O., KOTTAYAM-686571
- 9 RAJU A. M.,
ALACKALPARAMBIL HOUSE,
MEENADOM P.O., KOTTAYAM-686633.
- 10 VINODKUMAR K.,
PLAMKUTTATHIL HOUSE,
EATTUMANOOR P O,
KOTTAYAM-686631.
- 11 RUBBER WOOD INDIA PTV LTD,
REGIONAL OFFICE, INDIA WOOD FACTORY,
RUBBER BOARD RRDTDC COMPLEX, MANGAANNAM P.O.,
KOTTAYAM-686018,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI SHAJI ABHRAHAM.
- 12 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF LABOUR, SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI-110001.
- 13 REGIONAL LABOUR COMMISSIONER(CENTRAL),
MINISTRY OF LABOUR AND EMPLOYMENT,
OFFICE OF THE REGIONAL LABOUR
COMMISSIONER(CENTRAL), RAMANILAYAM,
T.C. 25/3453, UPPALAM ROAD, TRIVANDRUM-695001.
- 14 THE PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-

LABOUR COURT, 38/ 377, A-2, KARITHALA LANE,
KARSHAKA ROAD, ERNAKULAM-682016.

*ADDL. MR.RENESAN VAMAKESAN,
R 15 RESIDING AT VILLA 23, SKYLINE ROSEMOUNT HOMES,
KUNJAN BAVA ROAD, VYTTILA P.O., KOCHI, KERALA
682019.

(*ADDL. R15 IS IMPEADED AS PER ORDER DATED
02.06.2022 IN WPC NO. 8441/2020.

BY ADVS.

A.K.HARIDAS

G.HARIKUMAR (GOPINATHAN NAIR)

SHRI.P.VIJAYAKUMAR, ASG OF INDIA

MANU S., ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.08.2022, ALONG WITH WP(C).5187/2020, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C . R . ”

JUDGMENT

[WP(C) Nos.5187/2020, 8441/2020]

This order of mine shall dispose of two writ petitions; W.P.(C)No.8441/2020 titled as Rubber Board, Kottayam Vs. Manoj Kumar P.S. and others (hereinafter called ('first writ petition') and W.P.(C)No.5187/2020 preferred by Rubber Wood India Private Limited and others Vs. Manoj Kumar P.S. and others (hereinafter called 'second writ petition') with the following prayers:

Prayers in W.P.(C)No.8441/2020 (first petition):

“ (I) Call for the records relating to Exhibit P5 order and to quash the same by a writ of certiorari or such other appropriate writ, order or direction.

(ii) Stay all further proceedings before the 14th Respondent Central Government Industrial Tribunal cum Labour Court which are scheduled to start on 20.03.2020 as is evident from Exhibit P6 order.

(iii) declare that the Petitioner, who is a mere shareholder, cannot be made a party to proceedings under the ID Act against the 11th Respondent Company.

(iv) Issue such appropriate interim, incidental or other orders as may be deemed just and necessary in the facts and circumstances of the case.

Prayers in W.P.(C)No.5187/2020 (second petition):

- (i) Call for the records relating to Exhibit P4 order and to quash the same by a writ of certiorari or such other appropriate writ, order or direction.
- (ii) Stay all further proceedings before the 14th Respondent Central Government Industrial Tribunal cum Labour Court which are likely to be in pursuant to Exhibit P4 order.
- (iii) declare that the State Government is the appropriate Government under the scheme of the industrial Disputes Act as far as the 1st petitioner is concerned.
- (iv) Issue such appropriate interim, incidental or other orders as may be deemed just and necessary in the facts and circumstances of the case.

2. It is pertinent to mention here that by virtue of a proceeding initiated before the National Company Law Tribunal, Kochi Bench in CP(IB)/26/KOB/2022 initiated under Section 10 of Insolvency and Bankruptcy Code, 2016 an Interim Resolution Professional namely Mr.Renehan Vamakesan represented by Mr.A.Kevin Thomas and Smt.Nidhi Sam John, vide order dated 17.05.2022, has been appointed, thus the petitioner

company in W.P(C).5187/2020 is being represented through the aforementioned Interim Resolution Professional. Both the writ petitions involve a common question of fact and law and therefore are being disposed of by the common judgment.

3. The first writ petition is on behalf of the Rubber Board established under the Rubber Act, 1947 which falls under the aegis of Ministry of Commerce and Industry, Government of India. It is aggrieved of the order Ext.P5 dated 09.01.2020 of Section Officer, Ministry of Labour/Shram Mantralaya intimating the reference of dispute under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) whereas the contention is that it has 70% shareholding in the company known as Rubber Wood India Private Limited as evident from the Memorandum and Articles of Association. The pith and substance of the argument of the counsel representing the petitioner is that a Share holder, even if it is Central Government, in a Company established under the

Companies Act and if controlled and managed by the Central Government, the share holder cannot be impleaded as a party in a dispute between the employer and employee as there was no relationship of employer and employee; in other words the relationship of employer and employee would be between the Company and the employees. Till issuance of the notice impugned Ext.P5, the name of the petitioner did not figure at any point of time neither in the proceedings before the Conciliation Officer nor in the claim filed by the workmen. This fact is evident from Exts.P2, P3 and P4, copies of the applications submitted by respondent Nos.1 to 10. Receipt of the notice Ext.P5 resulted into a cause of action to approach this Court with the prayer aforementioned.

4. Order dated 09.01.2020 Ext.P4 in the second writ petition i.e., Ext.P5 in the first writ petition, has been assailed on behalf of the Company on the premise that the Central Tribunal would not be having a jurisdiction to entertain and try the dispute referred by

the appropriate Government for, Rubber Board India Private Limited is a company established under the Companies Act and is not controlled and run or managed by the Central Government. It has own Board of Directors and is a juristic person runs through resolutions passed from time to time as well as the Annual General Meeting. Owing to the definition of the provisions of Section 10, appropriate Government would be the "State" and therefore the matter is required to be referred to Labour Court established by the State Government. An 'appropriate Government' as per the definition of Section 2(a)(ii) would unambiguously lead to an irresistible conclusion that the dispute of such nature can be adjudicated only by Labour Court in respect of State Public Undertaking.

5. In support of the aforementioned contention the judgment of Honourable Supreme Court in **Heavy Engineering Mazdoor Union Vs. State of Bihar and Others ((1969) 1 SCC 765)** has been relied on, wherein, it has been held that where the employer

defined under Section 2(g) of the Industrial Disputes Act, 1947 would mean in relation to an industry carried on by or under the authority of any department of the Central Government or State Government. No such authority had been prescribed in regard to the business carried on by the respondent Company. Entire activity is carried on by the company without any control and management and therefore the order Ext.P4 is liable to be set aside.

6. On the contrary learned counsel appearing on behalf of the workmen submitted that the petitioner in the first writ petition Rubber Board would not have any cause of action as on plain and simple reading of the notice dated 09.01.2020 Ext.P5 in the first writ petition i.e., Ext.P4 in the second writ petition, nowhere it has been stated that it was issued to the Rubber Board except a copy which could be at the best considered as a necessary information and record. In a claim for gratuity Rubber Board was impleaded as a party while submitting an application before the controlling authority, as Rubber Board has the major shareholders to the extent

of 70% and company is run and controlled by the Central Government.

7. I have heard learned counsel for the parties and appraised the paper books.

8. It would be appropriate to extract the definitions of 'appropriate Government' provided under Section 2(a)(i) & (ii) and 'employer' provided under Section 2(g) of the Industrial Dispute Act, 1947.

Section 2(a)(i) & (ii)

(a) "appropriate Government" means

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of

1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under section 3 of the

Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], [the National Housing Bank established under section 4 of the National Housing Bank Act, 1987 (53 of 1987)], or [an air transport service, or a banking or an insurance company], a mine, an oil-field] '[a Cantonment Board,] or a [major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

[(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose,

the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment;]

Section 2(g)

“employer” means-

(i) in relation to an industry carried on by or under the authority of any department of [the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

9. On close scrutiny of the definitions of 'employer' as well as 'appropriate Government' it is clear that where any industry carried on by or under the authority of the Central Government the dispute is liable to be referred to the Central Tribunal and in relation to any other dispute, including the State Government undertaking it would be the domain of the Labour Court established by the State Government.

10. The question arises for adjudication is whether Rubber Wood India Private Limited, first petitioner in the second petition, can be said to be controlled and managed by the Central Government or not. To answer the aforementioned question it would be axiomatic to reproduce Section 4 of the Rubber Act, 1947. It provides that after the Constitution of the Board and the commencement of this Act, the Central Government shall, by notification in the official Gazette constitute for the purpose of the Act, to be called as Rubber Board.

“4. Constitution of the Board

(1) As soon as may be after the commencement of this Act, the Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Rubber Board

(2) The Board shall be a body corporate by the name of the Rubber Board having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The Board shall consist of -

(a) a Chairman to be appointed by the Central Government

(b) two members to represent the State of Tamil Nadu, one of whom shall be a person representing rubber-producing interests,

(c) eight members to represent the State of Kerala, six of whom shall be persons representing the rubber-producing interests, three of such six being persons representing the small growers,

(d) ten members to be nominated by the Central Government, of whom two shall represent the manufacturers and four labour,

(da) three members to be nominated by the Central Government of whom two shall be from the Department of Commerce and one from the Department of Agriculture and Co-operation;

(e) three members of Parliament of whom two shall be elected by the House of People and one by the Council of States,

(ee) The Executive Director, ex-officio, and (1) The Rubber Production Commissioner, ex-officio.

(4) The persons to represent the States of Tamil Nadu and Kerala shall be elected or nominated as may be prescribed

(5) Any officer of the Central Government when deputed by that Government in this behalf shall have the right to attend the meetings of the Board and take part in the proceedings thereof but shall not be entitled to vote

(6) The Board shall elect from among its members a Vice-Chairman who shall exercise such of the powers, and perform such of the functions of the Chairman as may be prescribed or as may be delegated to him by the Chairman.

(7) The members of the Board shall receive from the Board such allowances as may be prescribed

(8) It is hereby declared that the office of member of the Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament”

11. Any officer of the Central Government when deputed by that Government shall have the right to attend the meetings of the Board and take part in the proceedings but shall not be entitled to vote. Chairman shall be appointed by the Central Government and two members to represent the State of Tamil Nadu and one of whom shall be the person representing the rubber producing interests. Eight members to represent the

State of Kerala, six of whom shall be the persons representing the rubber producing interests whereas ten work members are to be nominated by the Central Government and three members to be nominated by the Central Government of whom two shall be from the Department of Commerce and one from Department of Agriculture and Co-operation, three members of Parliament of whom two shall be elected by the House of people and one by Council of States.

12. The dispute with regard to interpretation of the expression 'appropriate Government' defined under Section 2 of Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act' , for short) read with erstwhile provisions of Sections 617 of the Companies Act, 1956 arose before Supreme Court in **Heavy Engineering Mazdoor Union** (supra) wherein Heavy Engineering Corporation, a Company incorporated under the Companies Act was in a litigation with the employees and matter was referred, by interpreting the provisions of Section 2(a) of ID Act, by Central Tribunal noticing

that the entire share capital was contributed by the Central Government and all its shares were registered in the name of President of India and certain officers.

Noticing all these facts, in Paragraph No.6 it was held that meaning of the word 'employer' given in Section 2(g) of the ID Act would mean in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in that behalf, where no such authority is prescribed, would be the head of the department. But that would not mean that the head of the department which gives the directions as aforesaid, which supervises over the functioning of the company, would be the employer within the meaning of 2(g) of the ID Act whereas on the contrary, it suggested that the industry carried on by or under the authority of the Government would mean either the industry carried on directly by a department of the Government such as posts and telegraphs or Railways, or one carried on by such department through the instrumentality of an

agent.

13. The contention of referring the dispute to the State Government but not to the Central Government was held to have no merit. The aforementioned judgment was again referred to in respect of a dispute arisen between employees- employer under the provisions of the Contract Labour Regulation Abolishment Act, 1970 and matter went to the Honourable Supreme Court in **(1997 (9) SCC 377)** titled as **AIR India Statutory Corporation and Others Vs. United Labour Union and Others.**

14. AIR India Statutory Corporation engaged as a contract labour for sweeping, cleaning, dusting and watching of the buildings owned and occupied by them and the Act of 1970 regulated the registration of the establishment of the principal employer, the contractor engaging and supplying the contract labour in every establishment in which twenty or more workmen were employed on any day of the preceding 12 months as contract labour. In respect of a dispute amongst the

employees, matter was referred to Regional Commissioner, Central Bombay. The said Commissioner informed the AIR India Statutory Corporation that the State Government would be the appropriate Government under the Act and the matter would be decided by the Labour Court.

15. The contention of the Statutory Board was that the Labour Court established under the State Government would not have the jurisdiction as the jurisdiction would vest with the Central Government as the Central Government is the appropriate Government for the reason that it had a deep and pervasive control over the corporation. After due deliberation of the controversy, in Paragraph No.26 of the aforementioned judgment, it was held that the constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole would not be the criteria relevant to decide whether it is by or under control of the appropriate government under the Act. If a corporation is an instrumentality of the State or a company owned

wholly or partially by a share capital floated from the public ex-checker and give indicia that it is controlled by or under the authority of the appropriate Government, it would not mean that the Central Government having a majority share holder, the dispute would be referred to Central Tribunal.

16. In respect of a dispute between the employees of the Steel Authority of India matter reached the Honourable Supreme Court in a decision reported as **(2001 (7) SCC 1) Steel Authority of India Limited Vs. National Union Water front Workers and others** wherein, after due deliberation of the judgments referred to above, the view expressed in the **Heavy Engineering Mazdoor Union** was affirmed with further finding that whether a particular instrumentality or a company would be controlled by or under the Central Government would depend upon facts of each case. The finding to that aspect was held in Paragraph No.46 of the judgment in **Steel Authority of India Limited and Others (supra)** and the same reads thus:

“46. We have held above that in the case of a Central Government company/undertaking an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution, such an authority may be conferred either by a statute or by virtue of relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of the expression ‘appropriate Government’ in Air India’s case (supra). Point No.1 is answered accordingly.”

17. Now coming to the facts of the case. The perusal of the Memorandum and Articles of Associations of Rubberwood India Private Limited, certain clauses are required to be extracted to answer the question raised above. Clauses 4, 5, 30 and 31.

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MEMBERSHIP

4. Membership of the Company shall be restricted to:

- (i) Rubber Board constituted under the Rubber Act, 1947
- (ii) Andamans Timber Industries Limited (ATI)
- (iii) Kerala State Industrial Development Corporation Limited (KSIDC)
- (iv) Any other person/Registered Co-operative Societies/Company formed under the Companies Act, 1956/statutory bodies etc. approved by the Board.

SHARE CAPITAL

5. The authorised share capital of the company is Rs.3,00,00,000/- (Rupees three crores only) divided into 30,00,000 (Thirty lakhs) equity shares of Rs.10/- (ten) each with power to increase, reduce, alter or recognize the share capital in accordance with the provisions of the Companies Act, 1956.

30.The constitution of the Board of Directors of the Company shall be as provided hereunder:

- i) Rubber Board shall have the power to nominate Five Directors.
- ii) KSIDC shall have the power to nominate One Director
- iii) Financial institutions, banks extending loan to the Company may nominate one Director each not exceeding two in aggregate.
- iv) Remaining two Directors to be appointed by the Company in General meeting.

31. The Board may appoint a Director nominated by Rubber Board as the Chairman of the Company. The Chairman shall preside over the general meetings and the meetings of the Board of Directors. In the absence of Chairman in any meeting, the Annual General Meeting or the Board of Directors, may, as the case may be, elect a person to preside over such meeting.”

18. On examination of the above, it is evident that Rubberwood India Private Limited is an instrumentality of the Central Government, has been established under the Rubber Act, 1947 (Central Act) and the membership of the Company has been restricted to only Rubber Board, Andamans Timber Industries Limited, Kerala State Industrial Development Corporation Limited

(KSIDC) and any other person/Registered Co-operative Societies /Company formed under the Companies Act, 1956 /Statutory Bodies approved by the Board. Rubber Board shall have the power to nominate five Directors, KSIDC shall have the power to nominate one Director and Financial institutions, banks extending loan to the Company may nominate one Director each and two Directors to be appointed by the Company in General meeting. The appointment of the Director by the Board shall act as the Chairman of the company.

19. The ratio decidendi culled out in the judgments referred above and the provisions of the Memorandum and Articles of Association of the Rubberwood India Private Limited leads thus:

(1) Rubberwood India has been established under the Rubber Act, 1947 and Section 4 of the Memorandum of Association, extracted above, leads to irresistible conclusion that it is an instrumentality of the Central Government.

(2) Board has the power to appoint the Director

who would act as a chairman as it has more than 76% of shareholders.

The ratio culled out in **Steel Authority of India Limited (supra)** would be the binding factor for the courts to follow as the view laid down in **Heavy Engineering Mazdoor Union** has been reiterated by overruling the ratio culled out in **Air India Statutory Corporation (supra)**. The expression “controlled” and “by” would also be having an importance for adjudication of the controversy in dispute as to whether the reference to the Central Tribunal is legal and justified by the Central appropriate Government or not.

20. I am of the view that it would also appropriate to reproduce the order dated 09.01.2020. The same reads as under:-

“NO L-42011/166/2019 (IR(DU): WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of Rubberwood India Pvt Ltd, Registered Office, and their workmen in respect of the matters specified in the Schedule hereto annexed.,

AND WHEREAS the Central Government considers it desirable to refer the said dispute for adjudication;

NOW THEREFORE, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent. Govt Indus Tribunal-cum-Labour Court, ERNAKULAM. The said Tribunal shall give its award within a period of three months. "

21. The aforementioned reference has been made by an appropriate Government under the Government of India (Ministry of Labour) by adjudication of the dispute amongst the workmen and the company by Central Tribunal. The said order, according to me, based upon the facts and circumstances of the case, is perfectly illegal and justified and would not warrant any interference to form a different opinion that by accepting the argument of the petitioner in the second writ petition that it would be a State Government and the matter requires to be referred to the Labour Court.

22. Now the question further raises is, after the appointment of the Interim Resolution Professional whether the reference to the Central Tribunal can be permitted to continue or workmen represented by the Union are required to submit the claims before him. For answering the aforementioned question, it would be necessary for me to refer certain provisions of Insolvency and bankruptcy Code, 2016. Sections 10, 13, 18 of the Code and Regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read as follows:

10. Initiation of corporate insolvency resolution process by corporate applicant

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional, and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.]

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order

(a) admit the application, if it is complete and no disciplinary proceeding is pending against the proposed resolution professional] or

(b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional]:
PROVIDED that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of

receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

13. Declaration of moratorium and public announcement

(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order

(a) declare a moratorium for the purposes referred to in section 14,

(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15, and

(c) appoint an interim resolution professional in the manner as laid down in section 16

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional

18. Duties of interim resolution professional

(1) The interim resolution professional shall perform the following duties, namely:

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to (i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15,

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership

rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property,

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board. Explanation. For the purposes of this section], the term "assets" shall not include the following, namely:

(a) assets owned by a third party in possession of the corporate debtor

(b) held under trust or under contractual

arrangements including bailment, assets of any Indian or foreign subsidiary of the corporate debtor, and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

“9.Claims by workmen and employees

(1) A person claiming to be a workman or an employee of the corporate debtor shall submit claim with proof] to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule. PROVIDED that such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of the committee

(2) Where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one [claim with proof] for all such dues on their behalf in Form E of the Schedule.

(3) The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of

(a) records available with an information utility, if any, or

(b) other relevant documents, including

(i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues,

(ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or

(iii) an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any."

23. Regulation 9 provides that a person claiming to be a workman or employee of the corporate debtor, which in present case would be Rubberwood India Private Limited represented through Interim Resolution Professional, shall submit a claim with proof to said Professional in person, by posts or by electronic forms prescribed in Form D of the Schedule. It can also submit supplementary documents or clarifications in support of the claim and for the dues more than one workman or employee any authorised representative is permitted to submit one claim. As far as the existence of dues to workmen and employees are required to be proved, it

has to be on the basis of record available with the information utility, if any or other relevant documents including proof of the employment, evidence of notice demanding payment, order of a Court or a Tribunal. Interim Resolution Professional can also be rendered as a corporate director and is also enjoined upon an obligation to refer a claim before the NCLT viz-a-viz of the workman. But on reading of the Regulation 9, a very anomalous situation may arise which can be demonstrated through following hypothetical situation. Suppose a workman files a claim before a Professional and do not have the copy of the appointment or any other document in support thereof, whether in such circumstances the Professional would be having the power to call upon the employer who would be assuming the role of an employer and see the records to verify the claim put forth by the claimant to be genuine or otherwise. The right to challenge the decision of the Resolution Professional has also been provided under the Act through an appeal under Section 60(5) of the Code of

2016 before NCLT, and again before NCLAT under provisions of Section 61 of the Code. Thus, in my view, it would be totally a farcical exercise for the workman to lose their claim before the Central Tribunal for adjudication of the dispute as the proceedings before the Central Tribunal due to the interdiction by this Court have not made any headway. I am not proceeding further. Situation would have been different had this Court been called upon to adjudicate a controversy where the evidence or the proceedings before the Tribunal were the midway. In that eventuality, this Court could have let the Central Tribunal to adjudicate the controversy and for the purpose of execution, professional could have addressed the grievance of the workmen in accordance with the provisions of the Code and Regulations supra.

24. In this view of the matter, workmen respondents are directed to file their respective claims before the Interim Resolution Professional in accordance with the Regulation 9 *ibid.* Interim resolution

professional is directed to adjudicate the claim of the workmen strictly as per the Regulations and afford an opportunity to the workmen to inspect the record and prove their case in support of the claim and adjudicate the same within a period prescribed under the Code. W.P(C).5187/20 is disposed off.

25. Now coming to the first petition W.P. (C)No.8441/2020 as to whether the share holder can be pleaded as a respondent in a claim preferred by workmen through union, the answer is in negative. The facts and circumstances of the case would reveal that Rubber Board as noticed above is only a shareholder. It is settled law that the Government is not denuded from running a company holding majority of the shareholder. But the shareholder independently cannot be made a party for adjudication of the lis. Thus, though according to the workmen, no cause of action would have arisen in favour of the Rubber Board, but the copy of the order dated 09.01.2020 extracted above also was endorsed to the Rubber Board.

In my view the apprehension expressed dragged into the litigation for no rhyme or reason is justified. Accordingly it is made clear that the notice dated 09.01.2020 would be construed to be a claim against the company and not against the share holder. W.P. (C)No.8441/2020 is allowed in the aforementioned terms.

Sd/-
AMIT RAWAL
JUDGE

APPENDIX OF WP(C) 8441/2020

PETITIONER EXHIBITS

- | | |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF APPLICATION UNDER SECTION 10(2) OF THE INDUSTRIAL DISPUTES ACT, 1947 (HEREINAFTER REFERRED TO AS THE ID ACT) ALONG WITH A PETITION UNDER RULES 3 AND 4 (b) OF THE INDUSTRIAL DISPUTES (CENTRAL), RULES DATED NIL FILED BY THE 1ST TO 5TH RESPONDENTS BEFORE THE 12TH RESPONDENT SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF LABOUR. |
| EXHIBIT P2 | TRUE COPY OF APPLICATION DATED NIL FILED BY THE 6TH TO 10TH RESPONDENT BEFORE THE 12TH RESPONDENT SECRETARY TO THE GOVERNMENT OF INDIA. |
| EXHIBIT P3 | TRUE COPY OF APPLICATION DATED 17.11.2018 FILED BY THE 1ST TO 5TH RESPONDENTS BEFORE THE 13TH RESPONDENT. |
| EXHIBIT P4 | TRUE COPY OF APPLICATION DATED 17.11.2018 FILED BY THE 6TH TO 10TH RESPONDENT BEFORE THE 13TH RESPONDENT. |
| EXHIBIT P5 | TRUE COPY OF GOVERNMENT ORDER NO.L-42011/166/2019-IR(DU), DATED 09.1.2020. |
| EXHIBIT P6 | TRUE COPY OF SUMMONS DATED 28.02.2020 ISSUED BY THE 14TH RESPONDENT TO THE PETITIONER. |

APPENDIX OF WP(C) 5187/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF APPLICATION UNDER SECTION 10(2) OF THE INDUSTRIAL DISPUTES ACT, 1947 (HEREINAFTER REFERRED TO AS THE 'ACT') ALONG WITH A PETITION UNDER RULES 3 AND 4(B) OF THE INDUSTRIAL DISPUTES (CENTRAL) RULES DATED NIL FILED BY THE 1ST 5TH RESPONDENTS BEFORE THE 12TH RESPONDENT SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF LABOUR.
- EXHIBIT P2 TRUE COPY OF APPLICATION DATED NIL FILED BY THE 6TH AND 10TH RESPONDENT BEFORE THE 12TH RESPONDENT SECRETARY TO THE GOVERNMENT OF INDIA.
- EXHIBIT P3 TRUE COPY OF THE JOINT APPLICATION DATED 27/05/2019 FILED BY THE 1ST TO 10TH RESPONDENTS BEFORE THE 13TH RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE GOVERNMENT ORDER NO. - L-42011/166/2019-IR(DU) DATED 09/01/2020.

RESPONDENT EXHIBITS

- Exhibit R15(a) A TRUE COPY OF THE ORDER DATED 17/5/2022 IN CP(IB)26/KOB/2022
- Exhibit R13(a) A TRUE COPY OF THE WRITTEN SUBMISSION DATED 29.11.2018